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In re Application of :
T. Sekiya :
Application No. 08/162,650 :
Filed: December 6, 1993 :
Attorney Docket No. 2271/45006 :

In re Application of :
T. Sekiya :
Application No. 08/547,904 : DECISION GRANTING PETITION
Filed: October 25, 1995 :
~~Attorney Docket No. 2271/45006-A :~~

This is a decision on the petition filed February 5, 1996, in application No. 08/547,904 ('904 application), requesting that application No. 08/547,904 be treated as a continuation application under 37 CFR 1.62 and accorded a filing date of October 25, 1995, and a decision on the Request For Reconsideration Of Notice Of Abandonment filed February 2, 1996, in application No. 08/162,650 ('650 application), which is being treated as a petition filed under 37 CFR 1.181 requesting that the '650 application be considered pending when the '904 application was filed.

On October 25, 1995, application No. 08/547,904 was deposited. The filing included a form containing a request for a continuation application under 37 CFR 1.62.

On December 21, 1995, in application No. 08/547,904, Application Division mailed a Notice stating that the application papers deposited October 25, 1995, were not in compliance with 37 CFR 1.62 since application No. 08/162,650 was abandoned, or proceedings terminated on August 29, 1995.

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On February 2, 1996, in the '650 application, the present request for reconsideration of the notice of abandonment was filed. Petitioner argues that an extension of time was filed in the '650 application with a certificate of mailing dated October 25, 1995. As evidence thereof, petitioner submitted a copy of his postcard receipt for the '650 application, which acknowledges receipt of a petition for a two month extension of time with a certificate of mailing and check for \$790.00 on October 30, 1995. Petitioner requests that the application be considered pending when the '904 application was filed. A copy of the petition for extension of time was submitted with the petition.

On February 5, 1996, in the '904 application, the present petition and a check for \$130.00 for the petition fee were filed. Petitioner argues that an extension of time was filed in the '650 application with a certificate of mailing dated October 25, 1995, and therefore, the '904 application was proper, as filed. As evidence thereof, petitioner submitted a copy of his postcard receipt for the '650 application, which acknowledges receipt of a petition for a two month extension of time with a certificate of mailing and check for \$790.00 on October 30, 1995. Petitioner requests that application No. 08/547,904 be accorded a filing date of October 25, 1995 and the petition fee be refunded.

Upon review of the record, a petition for an extension of time filed October 25, 1995, is not present in the '650 application. However, the Office computer records show that the fee for a three (3) month extension of time was paid in the '650 application. Therefore, the evidence is convincing that the petition for an extension of time was filed on October 30, 1995, along with a certificate of mailing of October 25, 1995, in the '650 application and was subsequently misplaced in the PTO. Therefore, the '650 application was pending when the '904 application was filed. Accordingly, application No. 08/547,904, as filed, was entitled to a filing date of October 25, 1995 under 37 CFR 1.62.

In view of the above, the petition in application No. 08/547,904 is granted. The copy of the petition for extension of time filed in the '650 application will be used for examination purposes. The petition fee paid in the '904 application will be refunded.

The Notice mailed on December 21, 1995, in the '904 application was sent in error and is hereby vacated.

The preliminary amendment to the specification filed October 25, 1995, in the '904 application, will be entered in due course and must be considered by the examiner for entry of new matter not described in the application as filed. 35 USC 112, first paragraph; 35 USC 132.

Receipt is acknowledged of information disclosure statement filed October 25, 1995, in the '904 application.

Application No. 08/162,650 is being forwarded to Examining Group 2100 for correcting the Office computer records to show that a three month extension of time was filed October 30, 1995, along with a certificate of mailing of October 25, 1995, thereby extending the period for response to the final Office action mailed April 26, 1995, until midnight October 26, 1995 and to await the processing of file wrapper continuation application No. 08/547,904.

Application No. 08/547,904 is being forwarded to the Office of Finance for crediting the \$130.00 petition fee to counsel's deposit Account No. 03-3125.

Thereafter, application No. 08/547,904 will be returned to Application Division for further processing with a filing date of October 25, 1995, as a continuation application under 37 CFR 1.62 of prior application No. 08/162,650.

Telephone inquiries related to this decision are handled by the Office of Petitions staff at (703) 305-9282.

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